

APPROVED MINUTES
CITY OF MILPITAS

Minutes:	Regular Meeting of Milpitas City Council (Including Joint Meeting with Redevelopment Agency)
Date of Meeting:	June 3, 2003
Time of Meeting:	6:30 p.m. (Closed Session) 7:30 p.m. (Regular Session)
Place of Meeting:	City Hall Council Chambers, 455 E. Calaveras Blvd.

**CALL TO ORDER
ROLL**

Mayor Esteves called to order the regular meeting of the Milpitas City Council at 6:30 p.m. Present were Mayor Esteves, Vice Mayor Dixon, and Councilmember Polanski. Councilmember Gomez arrived at 6:50 p.m. Councilmember Livengood was absent.

CLOSED SESSION

Mayor Esteves publicly stated the Council would convene in Closed Session to discuss the following items listed on the agenda.

1. CONFERENCE WITH REAL PROPERTY NEGOTIATOR

(Pursuant to Government Code Section 54956.8)

Property: APN Nos. 086-05-009, 086-10-025, and 086-11-013

Negotiating Party: Thomas J. Wilson

Under Negotiation: Price and Terms of Payment

2. CONFERENCE WITH LABOR NEGOTIATOR

(Pursuant to Government Code Section 54957.6)

Agency Negotiator: Cherie Rosenquist

Employee Organization: LIUNA

Mayor Esteves adjourned the meeting to closed session at 6:31 p.m.

The City Council meeting reconvened at 7:30 p.m. with Mayor Esteves presiding and Vice Mayor Dixon and Councilmembers Polanski and Gomez present. Councilmember Livengood was absent.

**CLOSED SESSION
ANNOUNCEMENTS**

There were no closed session announcements.

PLEDGE

Mayor Esteves led the Council and audience in the pledge of allegiance.

MINUTES

MOTION to approve the City Council minutes of May 13, May 16, and May 20, 2003, including joint meetings with the Redevelopment Agency, as submitted.

M/S: Dixon, Polanski. Ayes: 4 Absent: 1 (Livengood)

SCHEDULE OF MEETINGS

City Manager Wilson stated on June 16, 2003, the Library Advisory Commission would meet at 7:00 p.m., and on June 30, 2003, there would be a Community meeting at 7:00 p.m. in the Committee Room to consider sites for the Library and Senior Center.

Vice Mayor Dixon stated she would be attending budget hearings on June 5, 2003, the first at 12:30 p.m. for the Santa Clara County JPA Library budget and at 6:00 p.m. the VTA Board would be going over the budget; on Friday, June 6, 2003, at 8:00 a.m., she would be attending a special joint meeting with the Board Supervisors and the VTA Board.

Councilmember Polanski stated the next meeting of the 50th Anniversary Celebration Committee would take place on June 18, 2003, at 7:00 p.m.

MOTION to approve the Schedule of meetings as amended.

M/S: Dixon, Gomez. Ayes: 4 Absent: 1 (Livengood)

PRESENTATIONS

Mayor Esteves presented Scott Zeise with a commendation acknowledging his graduation from high school, and expressed appreciation to him for his services as a member of the Youth Advisory Commission for the past six years. Ann Zeise presented Scott with his High School Proficiency results and with his Home School High School diploma.

Mayor Esteves presented Certificates of Appreciation to the following 2003 Renaissance students:

Clara Cartwright	Lyle Farrell	Carmen Rivera
Charles Lee	LaTosha Williams	Aysha Mohsin
Megan Wong	Yukari Takeuchi	Mercy Sanchez
Magnolia Conde Muyot		

Mayor Esteves presented Certificates of Appointments to Michael Pham, Don Peoples, and Tuong Nguyen who were all recently appointed to the City's new Economic Development Commission.

Mayor Esteves expressed appreciation on behalf of the City and announced he had signed Certificates of Appreciation for donations provided for the Mass Feeding exercise, April 24, 2003, at Weller Elementary School for the following businesses:

Burger King, 175 W. Calaveras Blvd.	McDonalds, 99 N. Milpitas Blvd.
Burger King, 1475 Dempsey Rd	McDonalds, 1854 N. Milpitas Blvd.
Carl's Jr., 120 W. Calaveras Blvd.	Nob Hill Foods, 401 Jacklin Rd.
Chili's Grill, 300 W. Calaveras Blvd.	Omega Restaurant, 90 S. Pk Victoria Dr.
Dominos Pizza, 55 Dempsey Rd.	Papa Murphys, 119 N. Milpitas Blvd.
El Toritos, 477 E. Calaveras Blvd.	Pizza Box, 1253 Jacklin Rd.
Florentine, 100 Great Mall Dr.	Pizza Depot, 42 Dixon Landing Rd.
Fresh Choice, 248 Great Mall Dr.	Ravioli's, 57 N. Milpitas Blvd.
Georgio's Italian, 643 E. Calaveras Blvd.	Round Table Pizza, 79 Abbott Ave.
Hot Dog On A Stick, 610 Great Mall Dr.	Taco Bell, 1774 S. Main St.
Hungry Hunter, 1181 E. Calaveras Blvd.	Taco Bell, 1365 S. Park Victoria Dr.
In-N-Out Burger, 50 Ranch Dr.	Taco Bell, 99 Ranch Dr.
LSI Logic, 1501 McCarthy Blvd.	Town Center Pizza, 85 N. Milpitas Blvd.
Little Caesar's Pizza, 287 Jacklin Rd.	Wal-Mart, 301 Ranch Rd.
Lyon's, 765 E. Calaveras Blvd.	Wienerschnitzel, 1333 S. Park Victoria Dr.
Kentucky Fried Chicken, 73 S. Main St.	

Planning Commission Chair Paul Hay, accompanied by Planning Commissioner Clifford Williams, reported that they, along with Planning staff member James Lindsay, had the honor of representing the City to accept a First Place award for the MidTown Specific Plan from the Northern Section of the California Chapter of the American Planning Association. Commissioner Hay presented the Award to the Mayor noting that the MidTown Specific Plan project had been sent on to the National level award program for a possible second award.

Mayor Esteves accepted the Award and then recognized Vice Mayor Dixon for her efforts on the MidTown Specific Plan and presented her with the Award.

CITIZENS FORUM

Mayor Esteves invited members of the audience to address the Council on any subject not on the agenda, requesting that remarks, including any visual or technology-assisted presentations of any kind, be limited to two minutes or less, and noted that the City Clerk would be using the timer and when the red light at the podium came on, two minutes would be up.

David Taylor, Milpitas, said he was involved in creative arts and ballroom dancing and asked the Council for suggestions of what he might do to get youth involved in activities.

Julie Cherry, Milpitas, said she was speaking on behalf of anyone attending a meeting in the Police Community Room and asked the Council to look into improving the acoustics in that room such as hanging decorative cloth banners to absorb some of the noise. Vice Mayor

Dixon suggested that staff contact Keith Walker at the School District for information on how they solved similar problems in school auditoriums.

Rob Means presented an update on the PRT reporting that five miles of test track was built and received British Railway Authority permission for passenger service; in the United States a minimum prototype has been unveiled and 14 PRT systems are under development; approximate cost is \$5 million per mile; the problem with PRT was not financial but political; and he hoped Milpitas would become part of the solution as there were many opportunities for funding and he hoped the City would consider this later on when he made a specific request.

Frank DeSmidt invited everyone to the Chamber's installation of officers and Business Person of the Year dinner on Friday, June 27, at the Crown Plaza.

ANNOUNCEMENTS

Councilmember Polanski reported that the Memorial Day Ceremony was a nice event and thanked staff and those who came to the ceremony; she attended the Milpitas Unified School District employee recognition program at the Community Center; and requested staff provide background information on the City's policy of not allowing City employees to serve on City Commissions.

Vice Mayor Dixon thanked Jenifer Lind and Milpitas High School Principal Chuck Gary for their annual invitation to be a participant as a presenter at the annual PTSA scholarship award evening, noting that the 2003 graduating class had the highest percentage of graduates ever in the history going on to a wide variety of schools, and the 2003 high school graduation would be taking place for the first time in the evening on the newly renovated high school field.

Vice Mayor Dixon reported on May 28, 2003, she had met with the Silicon Valley Rapid Transit Policy Advisory Board to look at the staff review of the Environmental Review document, it was a very large document, and staff had been instructed to make it available for the public on line; the Policy Advisory Committee for the County Expressway met for the final adoption of the draft improvements for the 20/20 Plan, which was a blueprint to make major improvements to the most congested expressways within the County and, as a compromise, the HOV lane from 680 to 880 would be dismantled until the eighth lane has been completed.

Mayor Esteves congratulated all the classes of 2003 and said the City would be placing signs of congratulations up.

AGENDA

MOTION to approve the agenda as submitted.

M/S: Dixon, Gomez.

Councilmember Polanski requested item No. 10 be moved up and heard before the public hearings. Mayor Esteves said he had no objection to the change. The maker of the motion and the second had no objection to the change.

VOTE ON MOTION: Ayes: 4 Absent: 1 (Livengood)

CONSENT CALENDAR

Mayor Esteves inquired if anyone wished to make any changes to the Consent Calendar.

City Manager Wilson noted the Council had received a corrected page 2 for item No. 7

MOTION to approve the Consent Calendar, items with asterisks on the agenda, as submitted, in accordance with the staff recommendations.

M/S: Gomez, Polanski. Ayes: 4 Absent: 1 (Livengood)

***4. Reappointments**

Approved the following reappointments:

Citizens Emergency Preparedness Advisory Committee: Reappoint Robert Finnie, Donna Wynne, and David Harman to three-year terms expiring June 2006; and reappoint John Pilger (Alternate No. 2) to a two-year term expiring June 2005.

Library Advisory Commission: Reappoint Sonny Wang, Sen Fan, Carmen Montano, and Yu-Lan Chou to two-year terms expiring June 2005.

Parks, Recreation, and Cultural Resources Commission: Reappoint Steve Munzel, Zeya Mohsin, and Frances Krommenhock to three-year terms expiring June 2006, and reappoint Henry Ku (Alternate No. 1) to a two-year term expiring June 2005.

- *5.
Dog Park Dedication Plaque** Approved the Dog Park dedication plaque.
- *6.
Arts Donation Policy** Approved the City of Milpitas Policy and Procedures for the Acceptance of Donated Artworks and Arts Donation Applications as drafted by the City Attorney.
- *7.
Grant Application Guidelines** Approved PRCRC recommendation for amended grant application guidelines for Individual and Group Youth Sport Assistance Fund.
- *8.
Spay/Neuter Program
Fee Increase**
1. Reduced the Spay/Neuter Program budget for FY 2003-04 from \$40,000 to \$20,000.
 2. Increased the Recovery Cost of the Spay/Neuter Program from \$5.00 to \$30.00/per voucher for Milpitas residents.
 3. Approved the effective date of the fee increase as of July 1, 2003.
 4. Directed staff to report back to the City Council in six months (January 2004 meeting) to determine any impact based on the proposed fee increase.
- *9.
Tsukuba City, Japan
Sister City Extension** Approved the Sister Cities Commission's recommendation for a one-year extension of the sister city relationship with the City of Tsukuba, Japan, and authorize the Mayor to sign updated MOU with Tsukuba, Japan.
- *11.
Ordinance No. 243.2
Excess Campaign Funds** Waived full reading of the ordinance and adopted Ordinance No. 243.2 amending Chapter 210 of Title I of the Milpitas Municipal Code.
- *12.
Ordinance Nos. 120.41 and
208.38, Setting Utility Rates &
Water and Sewer Connection**
1. Waived full reading of the ordinance and adopted Ordinance 120.41 amending Sections 6.13, 6.14, 6.15, 6.16 and 7.01 of Chapter 1, Title VIII of the Milpitas Municipal Code, setting water rates and water connection fees.
 2. Waived full reading of the ordinance and adopted Ordinance 208.38 Amending Sections 6.01 and 7.05 of Chapter 2, Title VIII of the Milpitas Municipal Code setting sewer rates and sewer connection fees.
- *13.
Unrepresented/PROTECH** Adopted Resolution No. 7321 to move two unrepresented classifications—Desktop Technician and Word Processing Operator to PROTECH effective July 1, 2003.
- *14.
Release Unclaimed Checks** Adopted Resolution No. 7322 transferring \$188.18 in checks unclaimed for more than one year to the General Fund in accordance with Standard Operating Procedures 26-1.
- *15.
LMD No. 95-1
McCarthy Ranch** Adopted Resolution No. 7310 preliminarily approving the Annual Engineer's Report for LMD 95-1, McCarthy Ranch, Program No. 9474, and providing for the notice of public hearing.
- *16.
LMD 98-1
Sinclair Horizon** Adopted Resolution No. 7311 preliminarily approving the Annual Engineer's Report for LMD 98-1, Sinclair Horizon, Program No. 9489, and providing for the notice of public hearing.
- *17.
Bellew Drive Widening
(Project No. 4191)** Adopted Resolution No. 7323 granting final acceptance of Bellew Drive Widening (Project No. 4191) and releasing of the bond.

- *18.
Solid Waste Programs** Approved two agreements with Santa Clara County regarding Solid Waste Programs (the first agreement concerns the collection of landfill fees; and, the second agreement concerns the collection of household hazardous waste), subject to approval as to form by the City Attorney.
- *19.
H. T. Harvey and Associates
(Project No. 4029)** Approved Amendment No. 1 to the Environmental Services Agreement with H. T Harvey & Associates for Calaveras Road Slope Rehabilitation (Project No. 4029), and authorized the City Manager to execute the amendment, subject to approval by the City Attorney as to form.
- *20.
Major League Soccer Camps** Approved authorization to enter into a contract with Major League Soccer Camps, Summer Youth Soccer Camps, in the amount of \$10,000, subject to approval as to form by the City Attorney.
- *21.
Skyhawks Sports Programs** Approved authorization to enter into a contract with Skyhawks Sports Programs, Summer Youth Sports Camps, in the amount of \$20,000, subject to approval as to form by the City Attorney.
- *22.
South Bay MOA** Approved authorization to enter into a contract with South Bay MOA, Adult Softball League Referees, in the amount of \$25,000, subject to approval as to form by the City Attorney.
- *23.
Pavement Improvement
Program (Project No. 4182)** Approved plans and specifications, and authorized advertising for construction bid proposals.
- *24.
Piedmont Road Bike Path
Sidewalk Improvements
(Project No. 4214)** For the Piedmont Road Bike Path and Sidewalk Improvements at St. John's Cemetery (Project No. 4214):
1. Approved plans and specifications
 2. Authorized advertising for construction bid proposals contingent on Department of Water Resources (DWR) permit.
 3. Approved Purchase and Sale Agreement and Escrow Instructions with Mr. And Mrs. Gaddy.
- *25.
Plans & Specs/Traffic Signals
(Project No. 4212)**
1. Approved plans and specifications for traffic signal installation at Barber Lane and Bellew Drive.
 2. Authorized advertising for construction bid proposals.
- *26.
Animal Control Services** Authorized the City Manager to execute a contract agreement with Wildlife Center of Silicon Valley to provide wildlife services in the amount not-to-exceed \$6,336, subject to approval as to form by the City Attorney.
- *27.
Ranger Pipelines
(Project No. 7050)** Awarded contract to Ranger Pipelines for Cathodic Protection System repairs, in the amount of \$1,130,550.
- *28.
Miscellaneous Vendors** Approved the following purchase request:
1. \$10,000.00 to Santa Clara County Sheriff's Department for increased cost of SLETS access fees due to costs of major technical enhancements passed through to countywide public safety agencies. (Funds are available from the Police Department operating budget for this service increase.)

ORDINANCES

10.
Ordinance No. 260
Display of Flags
(Adopt)
- City Attorney Steve Mattas reported the item before the Council was adoption of Ordinance No. 260 and contained the changes identified by the Council at its introduction on May 20, 2003, which included the addition of the City Council Chambers as one of the areas for ground level ceremonies; the ordinance was ready for consideration by the Council and he was available to answer questions.
- Mayor Esteves invited members of the audience to comment on the item, requesting comments be limited to two minutes or less.

Paul Hay, Milpitas, recalled the incident that took place in 1999 involving the Communist flag that was flown in front of City Hall for two days; the City had a policy at that time but it was not adequate protection from political abuse, it needed to be the law, an ordinance.

Francesca Ridgley, Milpitas, said that when visiting Milpitas' Japanese sister city (Kukizaki), the delegation was met by Japanese waving the United States flag and the United States flag was up on the pole side-by-side with the Japanese flag; in the Philippines, United States dignitaries and special events are honored by the United States flag being raised on ceremonial flag poles; and in many parts of the United States, she had witnessed the raising of foreign flags. Ms. Ridgley said she thought the City of Milpitas should reciprocate these honors when ceremonies were held in its City.

Charles Ridgley, Milpitas, stated the three flag poles in the front of City Hall should have nothing but the flags of Milpitas, the State, and the Country; however, the ceremonial poles in the plaza that were created with the new City Hall were meant to be a representation of the diversity of Milpitas and should be reserved for the various ethnic groups for ceremonial purposes, which was the intent.

Gigi Doyle, Milpitas, stated she immigrated from the Philippines 30 years ago, and although she loved the country of her birth, she strongly objected and was vehemently opposed to the flying of the Philippine flag, or for that matter of any flag of any other foreign country, in public places within City Hall, the State, Federal, or County places; was not opposed to foreign flags being flown in private places; and felt that the only time a foreign flag should be flown in a public place was when the head of state of the foreign country was visiting.

Don Grove, Milpitas, stated he found it an insult to have a foreign flag flown over the City Hall; questioned what purpose it brought to a ceremony to fly a foreign flag at City Hall rather than at the Adobe and further stated when the flag was raised, it was to claim territory, and he did not want his territory claimed by any foreign country.

Ed Riffle, Milpitas, commented on the People's Republic of China's flag that flew in front of City Hall on September 18, 1999, to celebrate 50 years of Communist rule over the people of China; expressed appreciation to the majority of the Council seeking to put an end to flag controversies in the City; said his opposition in 1999 resulted from being contacted by several people who escaped that Communist country and shared some of their experiences; commented that noted author, American citizen, and former Milpitas resident Harry Wu was not particularly overjoyed that the Communist flag was raised above his hometown; and urged the passage of the ordinance.

Councilmember Polanski thanked everyone who spoke and said there had been a controversy surrounding flag ceremonies in the City since 1991, which increased in 1999; in 1999 when the Communist flag was raised, she had come before the Council and asked that the Council adopt an ordinance to stop the confusion; referred to a discussion on KGO radio the previous Wednesday addressing an email wondering why the City of Milpitas had passed a resolution to daily fly a South Vietnamese flag with the State, the City, and the National flags; and said she believed the proposed ordinance not only respected the United States flag, but it still embraced all the different cultures within the community by allowing ground ceremonies and she had been waiting for years to have an ordinance passed.

Vice Mayor Dixon said she wanted to provide some history for those who may not know and summarized that in 1991 when the South Vietnamese community came to the Council requesting their flag be raised, the request caused the greatest level of discourse she had ever seen since moving to the City in the early 1970s; at that time, the Council designated two flag poles at the Higuera Adobe to recognize South Vietnam and other countries; described the difference between a policy and an ordinance, explaining that with an ordinance, a public process needs to be followed to amend an ordinance; the issue of placing flag poles at the new City Hall came from the Civic Center subcommittee; two flag poles were recommended, however, then Mayor Manayan wanted to have four flag poles; on September 18, 2001, the Civic Center report was presented which included the flag pole issue but not a public hearing;

last year she, along with then Councilmember Esteves, again tried to not have the four flag poles not constructed by the pond site but were defeated by a 3/2 vote; recently the Council received a request from the Vietnamese/American Community for recognition of the former Republic of Vietnam as the flag of the Vietnamese/American Community in the state of California, no where in the resolution did it say “fly”- the word was specifically put in the resolution to say “display”; the day after the last Council meeting, a mass media blitz took place to radio station KCBS, the Metro, and the Mercury; and Councilmembers received many calls because someone emailed Ron Owens on KGO with wrong information. Vice Mayor Dixon went on to say she had requested and received a tape of the Ron Owens segment; the tape basically humiliated the City of Milpitas by putting misinformation out there; and said she would like the course of action over the past four years be documented and sent to KGO, in particular to Ron Owens, so that, if this ever came up again, the true information could get out to the public.

Councilmember Gomez said he had asked the City Attorney several questions and the City Attorney had informed the Council that it was Constitutional to ban certain flags from being displayed at the Civic Center plaza and limit public expression because it was considered a non-public forum; although it was something that could legally be done, he did not believe in it; and while he agreed with those who believe the United States flag represented freedom, that freedom the flag represented was not easy to believe in. Councilmember Gomez further stated if you want to believe in free speech, let’s see you support somebody standing dead center in the middle of this Civic Center arguing real loud about an issue you would spend your lifetime opposing; if you say you really want to believe in free speech, then a symbol of your freedom has to include somebody else’s right to stand in the middle of your Civic Center and display a flag of their organization – to raise that flag – or do something similar to that in a public area; and said he thought this ordinance does one thing only – make you afraid of it. Councilmember Gomez said there were some serious problems coming along the way and this ordinance doesn’t take you one step closer to fixing any of them; if your concerns are roads, public safety, or affordable housing, this ordinance doesn’t do it. Councilmember Gomez further stated he would not tell anyone they did not have the right to protest or raise their flag in ceremony.

Mayor Esteves said he was very pleased to have this ordinance before the Council because of an obvious and long standing need, the need to be consistent, and to have some policy. Mayor Esteves commented he was of Asian descent and very proud of his heritage; but at the same time he had to think twice because if he embraced the flag of the Philippines, he could not stop the Iraqi flag or North Vietnamese flag because Constitutional, if we raise one flag we cannot say no to another flag and he would not just protest the raising of an Iraq flag or a North Vietnamese flag to be raised at City Hall, but would not approve it; he felt the good part of the ordinance was that diversity was respected; a ground ceremony was not limited to the four flag poles, it was extended to the City Hall rotunda, the Council Chambers, and the Community Center; during his recent visit to Washington, D.C., there was no flag raising, everything was a ground ceremony; and he hoped the City would be united as one community, one City, and one Country.

Councilmember Polanski stated it was her understanding that the flag policy currently allowed for a ceremonial flag site on City Hall but it was only for flags of other nations and requested clarification from the City Attorney. City Attorney Mattas explained that the distinction provided in the memorandum to the Council related to whether or not the City as an entity was expressing its own position or whether or not it was authorizing others to express their position; when the City authorizes others to express their position, it needs to do so in what was referred as a view point neutral matter, which means if you create a category, you need to allow all flags that fall within that category to be displayed in whatever form you have created as a limited public forum; if you distinguish that from the Veteran’s Memorial Flag Pole, where the City does not authorize any flag to be flown other than the ones specifically identified in the ordinance, that’s actually the City speaking as opposed to individuals speaking; and the City does have the ability, in those incidences, to be able to identify what it wishes to express as a City entity as opposed to individual entity.

Mayor Esteves inquired if this flag policy was a reversal of the resolution the Council made for the Vietnamese/American flag. City Attorney Mattas stated the policy did not reverse the resolution in the sense that the flag identified in that resolution could still be recognized at the Higuera Adobe or a ground level ceremony; the resolution made specific reference to the ceremonial flag poles, which the ordinance modified, but it did not prevent the display of that flag either at a ground level ceremony or at the Higuera Adobe. Mayor Esteves requested clarification that the City still officially recognized the Vietnamese/American flag as in the resolution. City Attorney Mattas stated that continued in force.

Mayor Esteves said it was difficult that some people would take the opportunity or take advantage of situations like this; the diversity of the ethnic groups that are active participants and contribute to the City would still be appreciated; and he did not like the fact that they were being misinformed because the City was treating everybody equally with the flag ordinance.

City Attorney Mattas clarified that the Council at its last meeting provided direction regarding the category of flags and identified flags of other nations in existence after 1954; it would be appropriate for the motion maker to make clear that the intent extends both at the Higuera Adobe and the ground level ceremonies; and suggested the Council make a further modification from what was in its packet and modify Section 1-600-3.3 (the sentence that presently reads "the other flag shall be used to raise and display the flag of another nation" and currently ends with a period) and at that point (to be consistent with the earlier section) it should say "flag of another nation in existence after 1954."

City Attorney Mattas read the title of Ordinance.No. 260.

MOTION to waive the reading beyond the title.

M/S: Polanski, Dixon. Ayes: 4 Absent: 1 (Livengood)

MOTION to adopt Ordinance No. 260 adding Chapter 600 to Title I of the Milpitas Municipal Code (with the modified language added by the City Attorney) related to display of flags.

M/S: Polanski, Dixon. Ayes: 3 Noes: 1 (Gomez) Absent: 1 (Livengood)

Councilmember Gomez, referring to the City Attorney's memo regarding the matter, stated the local paper would be requesting copies and said he wanted to make a motion authorizing release of copies of the memo.

City Attorney Mattas explained the memorandum presented to the Council was identified as an Attorney/Client communication and was confidential and privileged; the City Council had the authority to authorize the City Attorney to release it, however, direction would be needed from the entire Council; and recommended, if the Council wished to do that, it be provided to anyone who requested it as a member of the public without the identification of it being confidential and privileged.

MOTION to authorize release of the City Attorney's memorandum dated May 30, 2003, regarding Constitutionality of flag ordinance provisions to whomever requests it.

M/S: Gomez, Polanski. Ayes: 4 Absent: 1 (Livengood)

PUBLIC HEARINGS

1. Cultural Arts Support Program Grants

Public Services Assistant Renee Lorentzen reported at its April 28, 2003, meeting, the Arts Commission rated and recommended 12 Cultural Arts Department applications for the 2003/2004 funding cycle and voted to fund the top 10 scoring applicants in the amount of \$2,000, with the remaining two applicants to receive \$1,000 each. Ms. Lorentzen explained the manner in which the applicants were scored, stating that all recommended applicants were eligible under the funding guidelines in the Cultural Arts Support Program (CASP) grant.

Councilmember Gomez commented that he thought the Commission did a fine job, the Commission followed the guidelines previously approved by the Council, and supported the Arts Commission recommendation.

Vice Mayor Dixon, referring to the additional dollars left over, stated she had read through the Commissioners' comments regarding Ms. Merritt's proposal and could not make heads or tails out of it and didn't understand what was being proposed. Ms. Lorentzen responded to the best of her knowledge, Ms. Merritt's proposal was to create a cultural arts access project to the community; she thought that it would make available to children and their families free or at a discount access to cultural arts programming in Milpitas, including the surrounding Bay Area cities. Ms. Lorentzen explained that the "tool" was a card that would be taken to an event for free or discounted access; the \$1,000 would be applied to the marketing and production of the card or tool; and the other budget of \$44,000 included the activities that would be donated by the cultural arts groups. Vice Mayor Dixon said she felt it did not follow the requirements and guidelines, there was no follow-through or track record, it was already being done under a different name, and should wouldn't be supporting it.

Vice Mayor Dixon questioned the scoring, inquiring if there were any instructions that no number be duplicated, so as to really show a true priority. Ms. Lorentzen responded there were no such instructions given; the scores showed priority when averaged together.

Linda Rabe, Art Commissioner, commented that if the Council read her particular rankings, no two received the same number because when you are ranking, you can't give any two the same number but that had never been explained very clearly; the process would be reviewed in the next few months to make it better; explained that the Art Commissioners had 50 points and staff had 40 points and the scores are added together and averaged but hoped in the future that would go away; and as long as it was a working document, she thought it was good to keep reviewing and updating the process. Vice Mayor Dixon said that would be her recommendation.

Councilmember Polanski inquired if the Commissioners received staff comments prior to making their decision. Ms. Rabe stated the only information that was not received was the oral evaluation given that night.

Councilmember Polanski, referring to Ms. Merritt's application, expressed disappointment that no where in the application was it stated there were any possibilities of anything happening (i.e. San Jose Repertoire Theatre); she did not know of many cultural events in Milpitas that cost money where a big discount could be received. Ms. Lorentzen stated there were no letters of intent received in the written proposal; in Ms. Merritt's oral presentation, she indicated verbally some community groups both in and outside of Milpitas that had expressed agreement to participate in the project; Ms. Merritt had verbally stated she had spoken to School District people and students as well as children who come through the Community Museum who expressed interest in her proposal.

Councilmember Polanski questioned the statement that the Cultural Arts Support Program would not fund arts education programs in school projects or those projects designed specifically for students. Ms. Lorentzen explained this was to prevent any high school or any elementary school from receiving \$2,000 for an arts project within the classroom. Councilmember Polanski said it should be made clear in the guidelines and it should be clarified that it would be for both public and private schools.

Councilmember Gomez inquired if there were any systems for checks and balances for test programs like Ms. Merritt's. Ms. Lorentzen responded the checks and balances system currently in place was that a grant applicant who received money would, at the end of their event or project, have 60 days to file their final budget report with staff, which included copies of receipts indicating what the money was used for; at that point, staff would check the receipts, make sure everything was used for production marketing, rental, or artistic personnel; if it was not, then staff would meet with the grant applicant and review the spending and if it was deemed not within grant guidelines, steps could be taken to have the money refunded.

Councilmember Gomez inquired if Ms. Merritt did not make progress towards the \$44,000 or getting this off the ground, would the City get its money back. Ms. Lorentzen responded if the project fails and the money is used incorrectly, then the City had the right to ask for the money back.

Councilmember Polanski pointed out there were other costs the City incurred such as use of the facility and various in-kind fees received, and she thought it important that the public be made aware of that.

Mayor Esteves commented that there was always room for improvement, which staff and the Commission would be working on; expressed appreciation to the Commission for its work; felt flexibility and leeway should be given to the Arts Commissioners and staff because art was difficult to quantify, it was more appreciation, it could be valued differently by different people; and he was sure the applicants had been rated independently and objectively.

Mayor Esteves opened the public hearing and invited comments.

Julie Cherry, Arts Commissioner, stated she was not able to attend the meeting where the grants were rated and voted on; she had read all the applications very thoroughly and had some questions about Ms. Merritt's application, particularly because of some past history with her getting a grant from the City and some questions about the receipts that she showed later as a recipient of a grant; she understood, from reading the minutes of the meeting, that there was a lot of discussion about whether the top 11 should all get \$2,000 or the top 10 get \$2,000 and split the remaining \$2,000; and she felt it was something the Council should look at and discuss.

MOTION to close the public hearing.

M/S: Dixon, Gomez. Ayes: 4 Absent: 1 (Livengood)

Councilmember Polanski said she had read the minutes and all the information and felt that just because there was \$22,000 did not mean the City had to give that much away; she was not supportive of the \$1,000 grants; she felt that when the amount of the grant was too small, the paperwork makes it not worth the amount of money, both for staff and for the applicant's time; and was not in support of funding Ms. Merritt's request.

MOTION to approve the top 10 grant requests at \$2,000 each and dedicate the remaining \$2,000 to the next Art in the Park project.

M/S: Dixon, Polanski. Ayes: 4 Absent: 1 (Livengood)

Mayor Esteves ask for clarification that the \$2,000 would be part of the City's \$5,000 contribution. Vice Mayor Dixon responded yes.

2.
Ordinance 172.40
Massage Establishments and
Practitioners

Planning Manager Tambri Heyden reported that since the last significant amendment of the Massage Ordinance in 1995, recent requests brought to light the need to expand the situations and conditions upon which a massage practitioner and massage establishment must apply for a Police Department massage permit; the trends that had been observed were being addressed by the Police Department, Finance Department, Attorney's Office, and the Planning Division from a business license, zoning, legal, and Police Department enforcement approach; and one of the improvements being addressed was the amendments of the Massage Ordinance, which included four areas:

- a) removal of the massage permit exemption for individuals who perform massage as independent contractors, rather than direct employees, of physicians, surgeons, chiropractors, osteopaths, nurses, physical therapists and acupuncturists;
- b) expanded employment history information from 5 years to 10 years and certain criminal-related history to be submitted for a massage permit application;
- c) new training/educational requirements of 4 hours of continuing education relating to massage for individuals applying to renew a permit; and

- d) additional circumstances upon which the Police Chief is authorized to delay and/or deny an application and to suspend or revoke a permit.

Vice Mayor Dixon inquired if there had been a marked increase in the number of license applications. Ms. Heyden responded staff was noticing there were individuals that were exempt from having to apply for a massage permit; because of the exempt status, background checks could not be conducted.

Mayor Esteves questioned why the Police Chief would be the only one authorized to delay and/or deny an application and to suspend or revoke a permit and felt it could be an arbitrary decision or subjective decision.

Officer Kevin Corvin responded the current ordinance was set up to where it is investigated by one of the Police Chief's representatives; it was then the Police Chief's decision, and based within the guidelines that the Massage Ordinance has, he may deny an application. Mayor Esteves asked what happens if an inspection is made by another police officer, does it mean that the Police Chief has to be involved all the time. Officer Corvin responded the Police Chief was not involved in the groundwork; the Police Chief reviewed the process and the officer's recommendations and based on the findings, made a determination.

Police Chief Charles Lawson explained the recommendation was from the officers and he would not on his own deny an application without consultation with the Planning Manager and the City Attorney.

Mayor Esteves said he wanted to make sure the City's process was defensible when an appeal or protest was received. City Attorney Mattas stated the City's position was defensible; the circumstances under which the Police Chief exercises discretion were limited under the ordinance and would be done in consultation with the City Attorney's office.

Mayor Esteves opened the public hearing and invited comments. There were no requests

MOTION to close the public hearing.

M/S: Dixon, Polanski. Ayes: 4 Absent: 1 (Livengood)

Ms. Heyden read the title of Ordinance No. 172.40 amending Chapter 6, Title III of the Milpitas Municipal Code (Massage Establishments and Practitioners).

MOTION to waive the reading beyond the title and introduce Ordinance No. 172.40.

M/S: Polanski, Dixon. Ayes: 4 Absent: 1 (Livengood)

RECESS

Mayor Esteves recessed the City Council meeting at 9:16 p.m.

The City Council meeting reconvened at 9:22 p.m.

JOINT REDEVELOPMENT AGENCY AND CITY COUNCIL MEETING

RA1. CALL TO ORDER

Mayor Esteves called to order the regular meeting of the Milpitas Redevelopment Agency, meeting jointly with the City Council, at 9:23 p.m.

RA2. ROLL CALL

Present were Mayor Esteves, Vice Mayor Dixon, and Agency/Councilmembers Polanski and Gomez. Agency/Councilmember Livengood was absent.

RA3. MINUTES

MOTION to approve the Redevelopment Agency minutes of May 13 and 20, 2003, including joint meetings with the City Council, as submitted.

M/S: Polanski, Dixon. Ayes: 4 Absent: 1 (Livengood)

RA4.

MOTION to approve the agenda and consent calendar as submitted.

AGENDA

M/S: Dixon, Gomez.

Ayes: 4

Absent: 1 (Livengood)

RA5. RDA PROJECT AREA NO. 1 PLAN AMENDMENT ORDINANCE NO. 192.14

Mayor Esteves said the next item was consideration of a package of resolutions in support of the Eighth Amendment to the Redevelopment Plan for Redevelopment Project Area No. 1 and introduction of the ordinance to amend the Plan; this action was carried forward and continued from the joint City Council and Redevelopment Agency meeting of May 20, 2003. Mayor Esteves reminded the public that a public hearing was conducted on May 20th and everyone that wished to be heard was given the opportunity to speak; the public hearing was then closed; and if the public wished to speak tonight, the comments would not be included as part of the public hearing record as the hearing had been closed.

Assistant City Manager Blair King reported that before the Council/Agency for consideration was a package of six resolutions and the introduction of the ordinance that would amend the Redevelopment Plan. Mr. King noted the Council/Agency was being asked to consider each resolution separately. Mr. King introduced two members of the City's consultant team present in the audience -- Don Fraser of Fraser & Associates and Ethan Walsh of McDonough, Holland & Allen, who were available to answer Council questions.

Mr. King reported Redevelopment Law requires that, prior to acting upon the proposed amendment, the City Council must respond in writing and make written findings in response to each written objection of an affected property owner or taxing entity received before or at the public hearing; written comments that could be interpreted as written objections to the adoption of the Eighth Amendment were received from Pacific Gas and Electric and Bruce Pallack; written responses were prepared for each letter and the findings were attached to the resolution adopting the Findings in Response to Written Objections.

MOTION to adopt Resolution No. 7308 of the City Council adopting findings in response to written objections on adoption of the Eighth Amendment to the Redevelopment Plan for Milpitas Project No. 1.

M/S: Dixon, Polanski.

Ayes: 4

Absent: 1 (Livengood)

Assistant City Manager King stated the next resolution was a resolution of the Redevelopment Agency, which was required to prepare an Environmental Impact Report; as part of the public hearing on May 20, 2003, comments were received on the Final Environmental Impact Report, which was being presented for certification by the Redevelopment Agency.

MOTION to adopt Resolution No. RA201 of the Redevelopment Agency certifying and making findings regarding the Environmental Impact Report on the Eighth Amendment to the Redevelopment Plan for Milpitas Project No. 1.

M/S: Dixon, Polanski.

Ayes: 4

Absent: 1 (Livengood)

Assistant City Manager King stated the next resolution was also a resolution of the Redevelopment Agency that, if adopted, would allow the Redevelopment Agency to spend low and moderate housing funds outside of the added Redevelopment Project Area; the benefit would allow the financial benefit of low and moderate income housing funds throughout the City and avoid the concentration of low-income development within the added area.

MOTION to adopt Resolution No. RA202 of the Redevelopment Agency finding and determining that the use of monies from the low and moderate income housing fund outside the boundaries of the areas to be added to the Milpitas Redevelopment Project Area No. 1 will benefit the added area and authorizing the expenditure of such funds.

M/S: Dixon, Polanski.

Ayes: 4

Absent: 1 (Livengood)

Assistant City Manager King stated the last resolution of the Redevelopment Agency was a resolution of the Redevelopment Agency approving the eighth amendment to the Redevelopment Plan for Project Area No. 1.

MOTION to adopt Resolution No. RA203 approving the eighth amendment to the Redevelopment Plan for the Milpitas Redevelopment Project Area No. 1.

M/S: Dixon, Polanski. Ayes: 4 Absent: 1 (Livengood)

Assistant City Manager King stated the next resolution was of the City Council relating to the Environmental Impact Report; the lead agency in this case was the Redevelopment Agency; however, the City Council takes the final action and adopts a resolution certifying the Final Program Environmental Impact Report.

MOTION to adopt Resolution No. 7309 of the City Council approving and making findings regarding the Environmental Impact Report on the Eighth Amendment to the Milpitas Redevelopment Plan for Redevelopment Project Area No. 1.

M/S: Polanski, Dixon. Ayes: 4 Absent: 1 (Livengood)

Assistant City Manager King stated the final resolution was a resolution of the City Council also approving the expenditure of low and moderate income housing fund outside of the added Redevelopment area.

MOTION to adopt Resolution No. 7312 of the City Council finding and determining that the use of monies from the low and moderate income housing fund outside of the area to be added to the Milpitas Redevelopment Project Area No. 1 will benefit the added area and authorizing the expenditure of such funds.

M/S: Polanski, Gomez. Ayes: 4 Absent: 1 (Livengood)

Assistant City Manager King stated Ordinance No. 192.14 would amend the Redevelopment Plan for Project Area No. 1, and read the title of the ordinance.

MOTION to waive the reading beyond the title of Ordinance No. 192.14.

M/S: Polanski, Gomez. Ayes: 4 Absent: 1 (Livengood)

Assistant City Manager King stated the last action before the Council/Agency on this item was to introduce Ordinance No. 192.14.

MOTION to introduce Ordinance No. 192.14 amending the Redevelopment Plan for the Milpitas Redevelopment Project No. 1

M/S: Polanski, Gomez. Ayes: 4 Absent: 1 (Livengood)

**RA6.
PROPERTY PURCHASE
(SANTA CLARA COUNTY)**

City Manager Tom Wilson reported the Council had directed the City to work with Santa Clara County on the possible purchase of significant surplus properties the County had made available for consideration by the City. Using a PowerPoint presentation, Mr. Wilson pointed out that the property was located in an important area of the City and showed the location of the parcels the County had made available for potential purchase through a surplus process; the City had negotiated with the County to acquire these properties; there were approximately 36 acres with one parcel directly north of the existing Elmwood Jail comprising approximately 25 acres; another parcel was the site of the present Cracolice building site located on Abel Street and was just over one acre; the remaining parcel was approximately 9 acres, was an irregular parcel bisected at the southern end by the Elmwood facility and to the west of the Main Fire Station. Mr. Wilson further reported the parcels would be purchased by the Redevelopment Agency; the first component was an installment component that would be initiated by committing approximately \$40 million to the County for the acquisition of the property, \$20 million of which would be into a site development/infrastructure fund which

would support the development of the properties; the balance of the installments would occur over the next 20 year period; the first 10 years would be payments by the City's Redevelopment Agency to the County of \$4 million per year, \$5 million per year over the next 5 years, and \$6 million per year over the last 5 years; the total expended for the property over the 20 year period would be \$135 million; there would be a 15 year follow-up period, which may or may not occur, that would comprise a series of payments reflecting the larger amount of \$2 million or 50% of the sales tax generated from the Redevelopment area; the Redevelopment Agency had the resources and was projected to be able to finance and pay for all of the costs of the property; and in order to ensure the integrity of the transaction, the Council would be asked, if it approved the purchase, to also provide a sales tax sharing agreement supporting the purchase price if, for some reason, the Redevelopment Agency was unable to meet any of its annual commitments over the 35 year period. Mr. Wilson noted that the County had plans to commercially develop the remaining portion affronting I-880; the remaining parcels, which the City would acquire, would be committed to the development of the City's MidTown Plan, which included residential development; the City had the benefit of being involved with the County's pursuit of developers on that property; and, the third component of payment was a transaction being negotiated with KB Development. Mr. Wilson said an evaluation of the transaction had been done by Keyser Marston, which estimated the replacement value of the property would well exceed, in current dollars, \$150 million; in net present value because it is stretched over a period of time in the payments, the projected cost to the City was estimated, in today's dollars, at about \$135 million to \$139 million for approximately 35 acres.

Vice Mayor Dixon complimented City Manager Wilson and staff for the incredible job they had done working hand in hand with the County and said she felt privileged to be a part of the Council that would be able to say to the community we have done something about Elmwood.

Councilmember Gomez said he wanted to echo Vice Mayor Dixon's comments adding that progress was also being made toward increasing the City's housing stock and the number of affordable housing units.

Councilmember Polanski agreed completely with her colleagues and also commended the City Manager, Assistant City Manager, and the County.

Mayor Esteves said he thought it was really great for the City not only for the Elmwood concerns, but also the facilitation of the development to the surrounding areas.

MOTION to adopt Resolution No. RA204 of the Milpitas Redevelopment Agency approving a Purchase and Sale Agreement between the County of Santa Clara and the Redevelopment Agency for Acquisition of property and approving an Exclusive Negotiating Rights Agreement among the County, City, and Redevelopment Agency.

M/S: Dixon, Polanski. Ayes: 4 Absent: 1 (Livengood)

MOTION to adopt Resolution No. 7313 of the City Council approving an Exclusive Negotiating Rights Agreement between the County of Santa Clara, the City of Milpitas, and the Redevelopment Agency.

M/S: Dixon, Polanski. Ayes: 4 Absent: 1 (Livengood)

MOTION to adopt Resolution No. 7314 of the City Council approving a Sales Tax Sharing Agreement between the County of Santa Clara and the City of Milpitas.

M/S: Dixon, Polanski. Ayes: 4 Absent: 1 (Livengood)

**RA7.
FY 2003-2004 BUDGET & CIP**

Finance Director Emma Karlen stated that during the May 13, 2003, Budget Hearing, the Council conceptually approved the FY2003-04 Budget, Capital Improvement Program, and the Five-Year Capital Improvement Program; the final budget was being brought back to the Council/Agency with the modifications together with all the resolutions for approval; and the

changes to the final budget had no fiscal impact and would be incorporated in the final published document.

Rob Means said that left out of the Capital Improvement Program Budget this year was an item he would like added, which was an extension of the current study being conducted for crossing the railroad tracks; he had previously asked for the \$50,000 study a couple of years prior; Councilmember Livengood had thought it was a good project and the entire Council at that time had concurred; the study looked at how to get a crossing of the railroad tracks using the standard technology of steel and concrete bridges costing upwards of \$3 million; asked the Council/Agency for a \$20,000 extension of the study; felt there were three advantages that might be seen from the study: 1) are the costs realistic, 2) determine whether there are benefits not available in the standard technology (look less obtrusive); and 3) long-term possibility of getting a feeder line from the Sunnyhills area to the new BART station.

Councilmember Gomez expressed concern that the Capital Improvement Program did not identify the costs for the library and senior center and the Operating Budget did not have a finalized contingency plan (Plan A addressing employee salary reductions and Plan B addressing budget cuts) and without those, he didn't consider them complete and would be voting no on both.

Vice Mayor Dixon stated she did find the budget complete.

MOTION to adopt Resolution No. 7315 of the City Council adopting the FY 2003-04 Appropriations Limit of \$48,662,062 for the City of Milpitas.

M/S: Dixon, Polanski. Ayes: 4 Absent: 1 (Livengood)

MOTION to adopt Joint Resolution No. 7316/RA205 of the City Council and Milpitas Redevelopment Agency approving the City's Final FY 2003-04 Budget of \$99,232,847.

M/S: Dixon, Polanski. Ayes: 3 Noes: 1 (Gomez) Absent: 1 (Livengood)

MOTION to adopt Joint Resolution No. RA206/7317 of the Milpitas Redevelopment Agency and the City of Milpitas making findings following a Public Hearing for use of Redevelopment funds.

M/S: Dixon, Polanski. Ayes: 4 Absent: 1 (Livengood)

MOTION to approve an Agreement between the City and the Redevelopment Agency for the Construction of Public Improvements.

M/S: Dixon, Polanski. Ayes: 4 Absent: 1 (Livengood)

MOTION to approve the FY 2003-04 Capital Improvement Budget of \$9,689,575.

M/S: Dixon, Polanski.

Councilmember Polanski stated she felt the Capital Improvement budget was complete and that it did not behoove the Council to pick a number out of the sky for some major projects that would be coming up (i.e., the senior facility and the library).

VOTE ON MOTION: Ayes: 3 Noes: 1 (Gomez) Absent: 1 (Livengood)

MOTION to approve the Five-year Capital Improvement Program for the Fiscal Years 2003-04 through 2007-08 of \$26,947,552.

M/S: Dixon, Polanski. Ayes: 3 Noes: 1 (Gomez) Absent: 1 (Livengood)

MOTION to adopt Resolution No. 7318 of the City Council adjusting salary ranges for the Unrepresented Management Employees.

M/S: Dixon, Polanski.

Ayes: 4

Absent: 1 (Livengood)

***RA8.
CITY HALL UPDATE**

1. Adopted Resolution Nos. 7319, and 7320 granting final acceptance and release of the bond for contracts with Mauck Sheetmetal & Insul-Crete;
2. Approved four purchase orders included in the purchase order summary sheet.
3. Noted receipt and filed project close out progress report.

**RA9.
ADJOURNMENT**

There being no further Redevelopment Agency business, Mayor Esteves adjourned the Redevelopment Agency meeting at 9:58 p.m.

The City Council meeting continued.

REPORTS OF OFFICERS

**3.
Digital Business Academy**

Mayor Esteves placed this item on the agenda and said he felt this was a long overdue project as the equipment was obsolete which made it very frustrating for the students to use. Mayor Esteves further stated he participated in the investigation of the problems and also had been a mentor of the Academy for several years.

Rosemary Keith explained that the proposal before the Council requested funding for the new computer lab at Milpitas High School for the Digital Business Academy, which was a three-year program whereby the students had two years on the business application side in a PC Lab with their senior year spent in a Digital Art Lab where graphic art software applications were learned; the current lab was six years old, it was time to upgrade it, funding has been undertaken, and there was a shortfall. Ms. Keith stated there were 190 students in the Academy and explained the Lab was also open to non-academy students for the balance of the day allowing all students access to the Lab if signed up to take Digital Art either as an elective or through their enrollment in the Academy. Ms. Keith further stated others providing funding for the Lab were LSI Logic (some of the money funded two years ago through its Run had been allocated and saved for this Lab), Lifescan (money received through a grant donation made two years ago had been allocated and saved for this Lab), Mission College, and San Jose City College; any remaining money not received through outside grants would be taken from the Academy operating budget to get the Lab installed.

Mayor Esteves explained that he was recommending the City approve \$5,000 for the Lab as a symbol of endorsement by the City to the priceless value of technology and computer knowledge, especially at the Milpitas High School, and, hopefully, it would help in the solicitation of more funds.

Councilmember Polanski agreed with all of Mayor Esteves' comments and stated she thought it was a wonderful project.

Councilmember Gomez stated he was happy to support the program.

Vice Mayor Dixon, referring to statements made by Dr. Black, stated the biggest challenge coming up during these dire times was going to be surrounding the technology.

MOTION to approve a \$5,000 donation from the Council's Community Promotions budget to the Digital Business Academy at Milpitas High School.

M/S: Gomez, Polanski.

Ayes: 4

Absent: 1 (Livengood)

ADJOURNMENT

There being no further Council business, Mayor Esteves adjourned the City Council meeting at 10:05 p.m.

The foregoing minutes were approved by the City Council as submitted on July 1, 2003.

Gail Blalock, CMC, City Clerk

Date